

State of Hawaii  
Department of Land and Natural Resources  
Division of Boating and Ocean Recreation  
Honolulu, Hawaii 96813

September 9, 2010

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

OAHU

Grant of Term Non-Exclusive Easement to the Benevolent and Protective Order of Elks  
Honolulu Lodge No. 616 for a Seawall Encroachment and Swim-Step Ladder Purposes  
Waikiki, Honolulu, Oahu TMK 3-1-32(06)

APPLICANT:

Benevolent and Protective Order of Elks (Elks), Lodge No.616, domestic non-profit  
organization whose business and mailing address is 2933 Kalakaua Avenue, Honolulu,  
Hawaii 96815

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended

LOCATION:

Portion of government lands of Waikiki, Honolulu, Hawaii, Oahu. Identified by Tax  
Map Key 3-1-32(06), as shown on the attached map, EXHIBIT A.

AREA:

The area is 220 square feet, more or less, that includes portions as EASEMENTS A, B,  
and C.

Please reference attached EXHIBIT B.

ZONING:

State Land Use District: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State  
Constitution: Yes\_ No X

CURRENT STATUS:

Unencumbered

COMMENCEMENT DATE:

To be determined by the Chairperson.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain and repair portions of a seawall footing and swim-step ladder over, under and across State owned land.

CONSIDERATION:

One time payment to be determined by independent or staff appraisal establishing fair market rent, subject to the review and approval of the Chairperson.

TERM:

Fifty-five years

CHAPTER 343-ENVIRONMENTAL ASSESSMENT:

We have determined that the subject improvements are exempt from requirements regarding preparation of an Environmental Assessment in accordance with Section 343, Hawaii Revised Statutes, "Comprehensive Exemption List for the Division of Boating and Ocean Recreation, Department of Land and Natural Resources, State of Hawaii, as concurred by the Environmental Council, State of Hawaii", dated March, 1995.

The proposed improvement includes a new stainless steel or aluminum framed hand rail and steps, are designed to be fully attached to the existing concrete seawall, and will have minimal or no significant effects on the environment and are included under the following exemption classes.

EXEMPTION CLASS 3, 5: Construction of facilities to accommodate the elderly or handicapped persons. The proposed improvement will provide safer access to the ocean for elderly or handicapped persons, as well as the general public.

EXEMPTION CLASS 6: Construction or placement of minor structures accessory to existing facilities: 1. Installation of screens, safety barriers, guard rails, and other appurtenance designed to protect the public.

**DCCA VERIFICATION:**

Place of business registration confirmed: YES X NO     
Registered business name confirmed: YES X NO     
Applicant in good standing confirmed: YES X NO   

**APPLICANT REQUIREMENTS:**

1. Applicant shall be required to provide survey maps and descriptions according to State Department of Accounting and General Services standards and shall be responsible for payment of the survey and any costs associated to valuation of the subject easement.
2. Applicant shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State and County governments.
3. The Applicant owns the wall and shall be fully responsible for any and all maintenance.
4. The applicant shall include the State of Hawaii as additionally insured during the entire term. In addition, the Applicant, its successors and assigns shall indemnify and hold the State of Hawai'i harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, and contractors.

**REMARKS:**

The Applicant purchased the property in 1920 from the Castle Estate. The seawall was thought to have been built by the previous owner possibly in 1888. In 1956, the property was subdivided and half of the land was leased to the Outrigger Canoe Club. In 1959, the original Castle home was demolished and the present Elks Lodge was built and continues to occupy the property to date. The Elks acknowledge that the State owns the land and submerged land makai of the shoreline that the wall encroaches onto state property, that the Elks own the wall, and that the Elks are solely responsible to repair, maintain, and insure the wall. The Elks believe the wall is configured in the same design as originally built in the 1800s.

The Elks are requesting an easement from the State and approval to install a swim ladder that is designed to be fully attached to their seawall and would extend over a portion of submerged land fronting their property. Over the years some the members of the Elks have been challenged accessing the ocean. The installation of the swim-step ladder will allow all the members of the Elks to enjoy the ocean, as well may serve the general public to access the ocean as they may follow the shoreline of Diamond Head.

During the planning stages of the swim-step project, encroachments were discovered and identified as portions of the submerged base of the old seawall footing extending makai of the property line. The footing portion runs along the wall for approximately one hundred feet and extends approximately a foot and a half makai of the property line. This may have been overlooked as the sand comes and goes with the seasons.

The Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

EXHIBIT B shows the location of proposed swim-step ladder improvement, and the base portions of the wall extending past the property noted as EASEMENTS A, B, and C. The swim-step ladder would be placed within a portion Easement B.

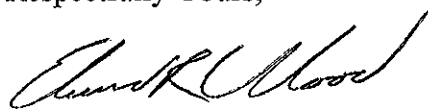
The Applicant wrote the Department's Office of Conservation and Coastal Land (OCCL) regarding the proposed swim step, and response from OCCL found that it was minor in scope, would be exempt from an Environmental Assessment and would not require a Site Plan or Conservation District Use Permit. Although not having any objections to the proposal, OCCL requested four conditions be met and acknowledged. See EXHIBIT C.

#### RECOMMENDATIONS:

That the Board:

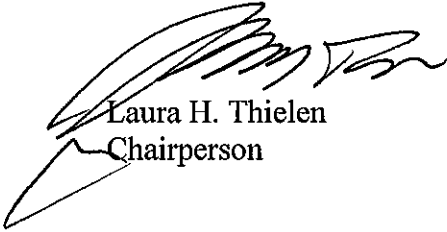
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, and 11-200, HAR, this project will have minimal or no significant effect on the environment and is therefore exempt from preparation of an environmental assessment.
2. Subject to the Applicant fulfilling all of the application requirements listed above, authorize the issuance of a term non-exclusive easement to the Benevolent and Protective Order of Elks Lodge No. 616 covering the subject area for right, privilege and authority to construct, use, maintain and repair, a right-of-way over, under and across State-owned land for access to portions of a seawall under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - A. The standard terms and conditions of the most current Term Easement Document form, as may be amended from time to time;
  - B. Review and approval by the Department of the Attorney General; and
  - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Yours,

A handwritten signature in black ink, appearing to read "Edward R. Underwood".

Edward R. Underwood  
Administrator

APPROVED FOR SUBMITTAL

A handwritten signature in black ink, appearing to read "Laura H. Thielen".

Laura H. Thielen  
Chairperson

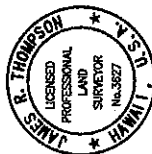


# MAP SHOWING

PROPOSED EASEMENTS A, B AND C FRONTING  
LOT 4, LAND COURT APPLICATION 351  
AT WAIKIKI, HONOLULU, OAHU, HAWAII

SCALE: 1 IN. = 100 FT.

NOVEMBER 5, 2009 WALTER P. THOMPSON, INC.



THIS WORK WAS PREPARED BY  
ME OR UNDER MY SUPERVISION

*James R. Thompson*  
DPT: 4/10

PROPERTY ADDRESS: 2933 KALAKAUA AVENUE  
HONOLULU, HAWAII 96815

PROPERTY OWNER: ELKS B P O R HONOLULU  
2933 KALAKAUA AVENUE  
HONOLULU, HAWAII 96815

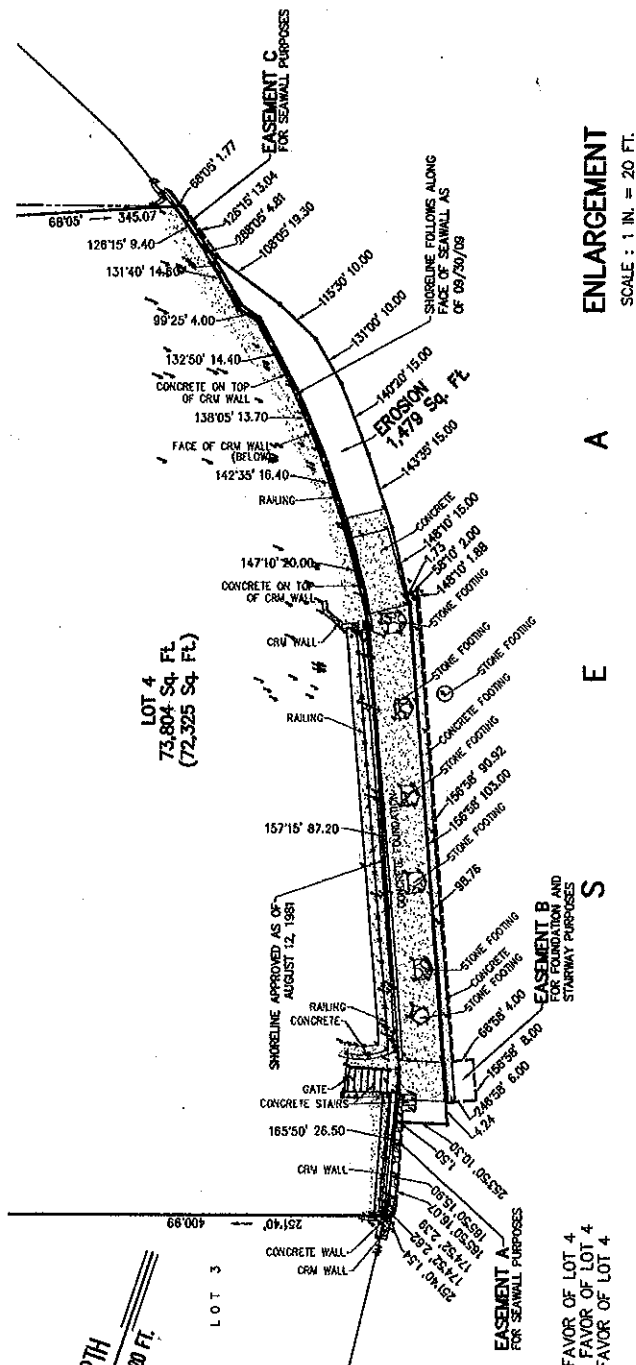
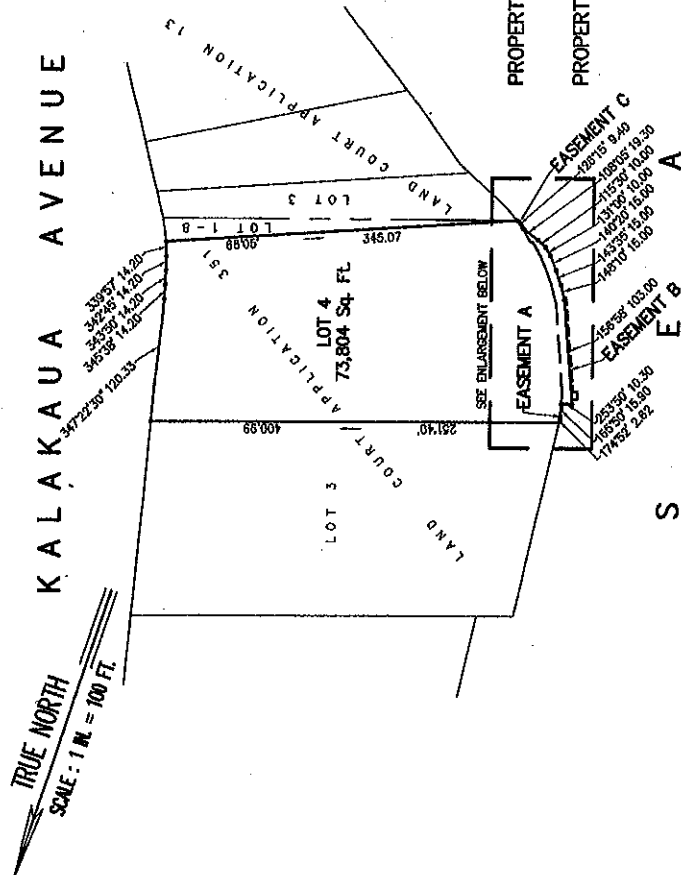
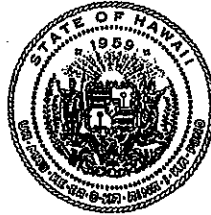
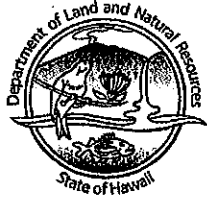


Exhibit B

AREA OF EASEMENTS  
EASEMENT A = 28 Sq. Ft. IN FAVOR OF LOT 4  
EASEMENT B = 233 Sq. Ft. IN FAVOR OF LOT 4  
EASEMENT C = 17 Sq. Ft. IN FAVOR OF LOT 4

LINDA LINGLE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
OFFICE OF CONSERVATION AND COASTAL LANDS

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

LAURA H. THIELEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
RUSSELL Y. TSUJI  
FIRST DEPUTY  
KEN C. KAWAHARA  
DEPUTY DIRECTOR - WATER  
AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

Ref: OCCL:MC

CORRESPONDENCE OA-10-01

AUG 14 2009

Keith P. Williams, PER  
Benevolent and Protective Order of Elks  
Honolulu Lodge No. 616  
2933 Kalākaua Avenue  
Honolulu, HI 96815

Dear Mr. Williams,

SUBJECT: SEAWALL SWIM-STEP (SHORELINE STRUCTURE)  
Kapi'olani Park, Waikīkī, Honolulu, O'ahu  
TMK (1) 3-1-32:6

The Department of Land and Natural Resources, Office of Conservation and Coastal Lands (OCCL) has reviewed the information you provided regarding the proposed swim-step leading into the ocean from the seawall fronting the above parcel. The steps would be makai of the shoreline, and thus would lay on State Submerged Lands, which are in the Resource Subzone of the State Land Use Conservation District.

The steps would enable elderly and physically challenged members to more safely access the ocean from your property. They would measure 15.75 square feet.

OCCL finds that the steps are a identified land use pursuant to Hawai'i Administrative Rules (HAR) §13-5-23 *Identified Land Uses in the Protective Subzone*, P-10 STRUCTURES, ACCESSORY, (A-1) *Construction or placement of structures accessory to existing facilities as identified in the exempt classes established in §11-200-8*.

The work appears to be minor in scope, and OCCL finds that the project would be exempt from needing an Environmental Assessment pursuant to Chapter 343, Hawai'i Revised Statutes (HRS), as amended, and HAR §11-200-8, *Environmental Impact Statement Rules, Exempt Classes of Action*.

**This proposal does not require a Site Plan Approval from OCCL or a Conservation District Use Permit (CDUP).**

You will still need to submit an application with DLNR's Land Division for a *Land Disposition*. The Land Division is likely to require more complete information on the proposal in order to present any easement request to the Board of Land and Natural Resources.

OCCL does not have any objections to the proposal, provided that:

- 1) The landowner shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State and County governments;

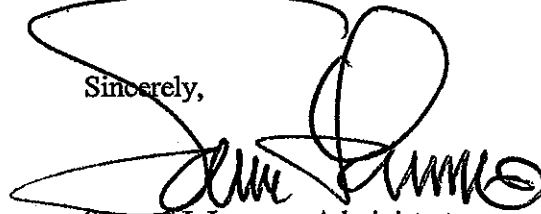
Exhibit C



- 2) The applicant, its successors and assigns, shall indemnify and hold the State of Hawai'i harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
- 3) In issuing this correspondence, the Department has relied on the information and data that the landowner has provided in connection with this matter. If, subsequent to the issuance of this correspondence, such information and data prove to be false, incomplete or inaccurate, this correspondence may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings; and
- 4) The landowner understands and agrees that this letter does not convey any vested rights or exclusive privilege;

Should you have any further questions, please feel free to contact Michael Cain at 587-0048.

Sincerely,

A handwritten signature in black ink, appearing to read 'Samuel J. Lemmo', is written over a large, stylized, looped signature that also appears to read 'Samuel J. Lemmo'.

Samuel J. Lemmo, Administrator  
Office of Conservation and Coastal Lands

cc: Chair, Land